

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,) No. Civ S-04-1037 LKK KJM
Plaintiff,)
v.)
APPROXIMATELY \$11,690.00 IN) FINDINGS AND RECOMMENDATIONS
U.S. CURRENCY,)
Defendant.)

This matter came on for hearing before the undersigned on June 15, 2005, on plaintiff United States' ex parte Motion for Default Judgment and for Final Judgment of Forfeiture. Assistant U.S. Attorney Courtney J. Linn appeared for plaintiff United States. There was no appearance by or on behalf of any other person or entity claiming an interest in defendant currency to oppose plaintiff's motion. Based on plaintiff's motion and the files and records of the court, THE COURT FINDS as follows:

This action arose out of a Verified Complaint for Forfeiture In Rem filed May 27, 2004.

Plaintiff United States of America has moved this Court, under Local Rule A-540, for entry of default judgment of forfeiture¹ against the following potential claimants: Francis G.

¹ At hearing on the government's motion, its counsel indicated it was withdrawing the request for a certificate of reasonable cause under 24 U.S.C. § 2465 included in its original application filed May 13, 2005.

1 Orr and Dennis R. Wheeler.

2 Plaintiff has shown that a complaint for forfeiture was filed; that a reasonable
3 basis in fact exists for the forfeiture of the defendant currency; that potential claimants were
4 served² with process; that any and all other unknown potential claimants have been served by
5 publication; and that grounds exist for entry of a final judgment of forfeiture.

6 Potential claimants Francis G. Orr and Dennis R. Wheeler failed to file a claim to
7 the defendant currency and failed to file an answer to the complaint under Rule C(6) of the
8 Supplemental Rules for Certain Admiralty and Maritime Claims.

9 On December 8, 2004, as provided by Rule 55(a) of the Federal Rules of Civil
10 Procedure, a Clerk's Entry of Default was filed against Francis G. Orr and Dennis R. Wheeler.

11 Therefore, IT IS RECOMMENDED as follows:

12 1. That Francis G. Orr and Dennis R. Wheeler be held in default;
13 2. That plaintiff's motion for default judgment of forfeiture be granted;
14 3. That a judgment by default be entered against any right, title or interest of
15 Francis G. Orr and Dennis R. Wheeler in the defendant currency;

16 4. That a final judgment be entered, forfeiting all right, title and interest in the
17 defendant currency to the United States of America, to be disposed of according to law, including
18 all right, title and interest of Francis G. Orr and Dennis R. Wheeler;

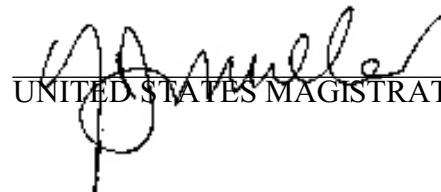
19 5. That counsel for the government shall submit a proposed form of Final
20 Judgment of Forfeiture to the District Judge within the twenty day objection period provided for
21 below; and

22 6. That a Final Judgment of Forfeiture be entered upon adoption of these findings
23 and recommendations.

25 ² Dennis Wheeler was personally served with process. Francis Orr was served by virtue
26 of substituted service on her husband, which satisfies the requirements of service set forth in
27 Federal Rule of Civil Procedure 4(e), and the requirement that service be "reasonably calculated,
28 under all the circumstances, to apprise [an] interested part[y] of the pendency of the action and
afford [her] an opportunity to present [] objections." See Dusenberry v. United States, 534 U.S.
161, 168 (2002).

1 These findings and recommendations are submitted to the United States District
2 Judge assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within twenty
3 days after being served with these findings and recommendations, any party may file written
4 objections with the court. The document should be captioned "Objections to Magistrate Judge's
5 Findings and Recommendations." Any reply to objections shall be filed within five days from
6 the filing of the objections addressed by the reply. The parties are advised that failure to file
7 objections within the specified time may waive the right to appeal the District Court's order.
8 Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991).

9 Dated: June 16, 2005.

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UNITED STATES MAGISTRATE JUDGE
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